*** THE HON'BLE SRI JUSTICE B.PRAKASH RAO**
AND
*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NOS. 6068 AND 6123 OF 2004 AND 16890 OF 2006

<u>WRIT PETITION NOS. 6068 OF 2004</u>:

% Dated 09.03.2007

G. Rajababu

.... Petitioner

Vs.

$ The Government of A.P., rep., by its Principal Secretary, Labour, Employment and Technical Education Department, Secretariat Buildings, Hyderabad and six others.

.... Respondents

! Counsel for the Petitioner: Sri P. Naveen Rao

^ Counsel for the Respondents: Government Pleader for Services -I

<GIST:

> HEAD NOTE:

? Cases referred

[1] AIR 2002 SC 77
2 AIR 1989 SC 2060
3 AIR 2000 SC 1729
4 (2003)4 SCC 147)
5 (2003)7 SCC 517
6 Judgment in W.P.No.25633 of 1999 dated 25.3.2003
7 AIR 1995 AP 86 (FB)
8 1988(2) ALT 227
9 2001(4) SCC 534
10 2003(1) SCC 692

11 AIR 1990 SC 1747
12 AIR 1966 SC 1678
13 (1984 (2) SCC 500
14 (2001)8 SCC 61
15 (2003)5 SCC 134
16 (2005)10 SCC 437
17 (2003)2 SCC 455
18 (2004)11 SCC 625
19 (1986 (4) SCC 746
20 AIR 1992 SC 96
21 (2001)4SCC 139
22 (2001)3 SCC 735
23 1998)3 SCC 234
24 2005(8) SCC 325
25 AIR 1981 SC 561
26 1997(6) SCC 623
27 AIR 1955 SC 123
28 AIR 1967 SC 1643
29 (1999) 9 SCC 559
30 (2001)1 SCC 534
31 2001(5) SCC 519
32 (2002) 6 SCC 562
33 AIR 1997 SC 1125
34 (2003)7 SCC 517

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NOS. 6068 AND 6123 OF 2004 AND 16890 OF 2006

COMMON ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

W.P. No. 6068 of 2004 is filed against the order of the Andhra Pradesh Administrative Tribunal in O.A. No. 6334 of 1997. W.P. Nos. 6123 of 2004 and 16890 of 2006 are filed against the order in O.A. No. 1854 of 1997.

O.A. No. 1854 of 1997 and batch, which included O.A. No. 6334 of 1997, was allowed by the Tribunal, in its order dated 27.03.2003, and the rules in G.O.Ms. No. 14 dated 26.11.1994, as amended in G.O.Ms. No. 22 dated 09.05.1996, to the extent they

provided a channel for the senior assistants and senior stenographers, working in the head office of the labour, factories and boiler departments and subordinate offices of the factories and boilers department, to be appointed by transfer to the post of assistant labour officer and the related provisions providing for quota and rotation etc., to these categories, were declared void being violative of the mandatory provisions of the A.P. Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (hereinafter referred to as the Presidential Order) and the respondents in the O.A. were directed not to give effect to these provisions. The Tribunal, however, held that as the earlier judgments of the Supreme Court had upheld similar rules, and it was only in **V. Jagannadha Rao Vs. State of A.P.**[1] (judgment dated 07.11.2001) that these rules were held to be in violation of the Presidential Order, any action taken in compliance with the rules till 07.11.2001 should not be disturbed so as to result in reversion of any employee from the post to which he had been promoted under these rules.

It is only to the limited extent that the order of the Tribunal, in O.A. No. 1854 of 1997 and batch, has been given prospective effect from the date of the judgment of the Supreme Court in **V. Jagannadha Rao**[1] that the applicants, in O.A. No. 1854 of 1997 and O.A. No. 6334 of 1997, have filed W.P. No. 6123 of 2004 and W.P. No. 6068 of 2004 respectively. Some of the respondents, in O.A. No. 1854 of 1997, have filed W.P. No. 16890 of 2006 before this Court aggrieved by order of the Tribunal declaring the channel prescribed, for appointment by transfer to the post of assistant

labour officer, in the rules notified in G.O.Ms. No. 14 dated 26.11.1994, as amended by G.O.Ms. No. 22 dated 09.05.1996, ultravires the Presidential Order.

The applicants in O.A. No. 1854 of 1997 & batch are mainly senior assistants working in the subordinate offices of the labour department and are members of the A.P. Labour Subordinate Service. The senior assistants and senior stenographers working in the subordinate offices of the labour department, along with the senior assistants and senior stenographers working in the head office, and those working in subordinate offices of the factories and boilers department, form the feeder categories, for appointment by transfer to the post of assistant labour officer, under Rule 3 of the A.P. Labour Subordinate Service Rules.

The applicants, in O.A.No.1854 and batch, contended before the Tribunal that the post of assistant labour officer was a zonal post and, therefore, employees working in the subordinate offices in the respective zones were alone entitled to form the feeder category. They contended that inclusion of other categories, from outside the zone, to form part of the feeder channel for appointment by transfer to zonal cadre posts offended the provisions of Para 3(3) and 5(1) of the Presidential Order. The respondents, in O.A. No. 1854 of 1997 & batch, however, relied on Para 5(2) of the Presidential Order, which permits transfer of employees from outside the zone, to contend that inclusion of senior assistants and senior stenographers working in the office of the head of the department, and senior assistants and senior stenographers of the factories and boilers department, to form part

of the feeder categories, for appointment by transfer to the post of assistant labour officer, did not violate the Presidential Order.

The Tribunal relied on the judgment of the Supreme Court in **V. Jagannadha Rao**[1] wherein two earlier judgments of the Supreme Court, in **State of A.P. Vs. V. Sadanandam**[2] and **Government of Andhra Pradesh Vs. B. Satyanarayana Rao**[3], were held not to have been decided correctly. The Tribunal noted that a similar provision, as in **V. Jagannadha Rao**, was prescribed under the second method of appointment in rule 3 of the impugned Rules. The Tribunal held that Para 14 of the Presidential Order was by way of a savings clause and merely provided that the various mandates and restrictions under the Presidential Order did not apply to posts in the office of the heads of departments and it only meant that the posts enumerated therein were not required to be organized into local cadres. The Tribunal further held that the object of Para 14 was that, notwithstanding the geographical location of these offices and considering the nature of the posts, the geographical restrictions for constituting a local unit and a local cadre were not applicable to these posts and that nothing in Para 14 of the Presidential Order justified prescription of any rule providing for appointment of a person, from outside the local cadre and outside the zone, to a post in a local cadre or the zone in respect of posts for which such cadres or zones had been organised under the Presidential Order. The Tribunal held that the power to effect transfers, in Para 5(2) of the Presidential Order, did not include the power make appointment by transfer and the impugned rules in G.O.Ms.No.14 dated 26.11.1994 as amended

upto date, to the extent they provided for appointment of senior assistants and senior stenographers working in the head office and subordinate offices of the factories and boilers department, which were outside the zone, by transfer to the zonal post of assistant labour officer, was void as being violative of Para 3(3) and 5(1) of the Presidential Order.

Sri M. Panduranga Rao, learned counsel for the petitioner in W.P. No. 6123 of 2004, would submit that having held that the impugned rules were in violation of the Presidential Order the Tribunal had erred in giving it prospective application only from the date of the judgment of the Supreme Court in **V. Jagannadha Rao**[1]. Learned counsel would place reliance on **Sarwan Kumar Vs. Madan Lal Aggarwal**[4] and **M.A. Murthy Vs. State of Karnataka**[5] to contend that the power to over-rule a judgment prospectively was available only to the Supreme Court and, in so far as High Courts/Tribunals were concerned, once the rules were held to be in violation of the Presidential Order, the judgment would relate back from the inception.

Sri P. Naveen Rao, learned counsel for the petitioners in W.P. No.6068 of 2004, would place reliance on a Division Bench judgment of this Court in **J. Vivek Kumar Vs. The Government of India**[6], to contend that a judgment can be applied prospectively only by the Supreme Court and it is not open to the Tribunal to hold that a particular judgment was prospective in its application. Learned counsel would submit that, since the respondents in the O.A. had chosen to join offices of the heads of departments on

their volition, they could not now turn around and claim that they belong to the zone or to any local cadre. Learned counsel would submit that the interpretation placed on Paragraphs 3 and 5 of the Presidential Order in the earlier judgments of the Supreme Court had been reversed and the interpretation placed, in **V. Jagannadha Rao**[1], on these and other provisions of the Presidential Order, was binding on the High Court.

Sri Abhinand Kumar Shavili, learned counsel for the petitioners in W.P.16890 of 2006, would submit that, in **V. Jagannadha Rao**[1], the question which arose for consideration was whether employees from the factories and boilers department could be appointed by transfer to posts in the labour department and the question, whether employees from the office of the heads of departments could be appointed by transfer to posts in subordinate offices of the same department, did not arise for consideration therein. Learned counsel would place reliance on the instructions in G.O.P. No.729 dated 1.11.1975 wherein Clause 21, which relates to recruitment to posts in the secretariat, offices of heads of department etc., provides that the scheme of reservation in favour of local candidates, as notified in the Presidential Order, would not apply to such posts, and that direct recruitment to fill posts in these offices would be on a State-wide basis as it was the government's intention that such offices and establishments should, as far as possible, cease to be separate units of appointment and that posts in such offices and establishments should not, ordinarily, be filled by direct recruitment or by drawing persons on tenure basis from different local cadres. Learned

counsel would submit that the scheme of reservation in favour of local candidates, as prescribed in the Presidential Order, did not apply to posts in the offices of the heads of departments and, therefore, employees appointed to such posts could be appointed by transfer to posts in the subordinate offices. Learned counsel would refer to the provisions of the A.P. Educational Institutions (Regulation of Admission) Order, 1974, to contend that the petitioners had a right to be classified as local candidates of one local area or the other and that, the mere fortuitous circumstance of their working in the head office would not disentitle them from being treated as a local candidate in one local area or the other. Learned counsel would refer to Rule 3 of the A.P. Ministerial Service Rules, 1998 which prescribes the method of appointment for several categories of posts. He would place reliance on Note (1) thereunder which provide that the first out of every eight successive vacancies of superintendents in the offices of heads of departments and directorates are to be filled by transfer from the category of superintendents working in the subordinate offices under the administrative control of the concerned heads of departments, or the directorate as the case may be, and that, if a person so appointed by transfer faces reversion, he shall be reverted to his parent unit of the department. Learned counsel would also refer to Note (2) which provides that the first out of every four successive vacancies of senior assistants in the offices of heads of departments shall be filled in from amongst suitable senior assistants working in subordinate offices of the concerned heads of departments. According to the learned

counsel since persons from subordinate offices are entitled to be appointed by transfer to the head office, likewise, employees working in the head office would be eligible to be considered for appointment by transfer to subordinate offices. Learned counsel would contend that recruitment in the head office cannot deprive employees, appointed in such posts, of their fundamental right of being treated as a local candidate or to be brought within a local area under the Presidential Order, that Paragraph 3 of the Presidential Order had no application to the facts of the present case and that Paragraph 5(1) should be interpreted in such a manner that the percentage of reservation prescribed in Paragraph 8, which relates to direct recruitment, should also be applied for promotion or appointment by transfer in which event, at least to the extent of the unreserved vacancies, employees from outside the local area would also be entitled to be considered for appointment to such posts either by promotion or by transfer.

Learned Government Pleader would submit that, consequent to the judgment of the Supreme Court in **V. Jagannadha Rao**[1], the government had examined the matter and was advised that the Presidential Order should be amended, by inserting a new Paragraph 5(2) to the Presidential Order, to provide for a channel for appointment by transfer of section officers/senior stenographers/asst. section officers of the secretariat and superintendents and senior assistants of the heads of departments to localized executive posts, that the Government of India had been addressed and that necessary orders in the matter were awaited.

The A.P. Labour Subordinate Service Rules was notified in G.O.Ms.No.14 dated 1.7.1993. Rule 2 thereof prescribes the constitution of the service. It includes several categories of posts and under category (1) thereunder is the post of Assistant Labour Officer (including Assistant Inspectors of Factories, Welfare Organizers & Executive Assistants, S.I.H.S). Under Rule 3, the method of appointment and the appointing authority for the post of Assistant Labour Officer is as below mentioned:-

Category (1)	Method of Appointment (2)	Appointing Authority
Assistant Labour Officer	(i) By direct recruitment; (ii) By transfer from Sr. Assistant and Senior Stenographers in the A.P. Ministerial Service, working in Head Offices and Subordinate Offices of the Labour Department, Factories Department and Boilers Department; (iii) By promotion from the categories of: Health Visitor, Nursery School Teacher, Craft Instructress, Games Supervisor, Adult Education Teachers (including Workers Education Teachers) Audio-Visual Incharge	Deputy Commissioner of respective Zones.

Note (1) thereunder reads thus:

"Note (1):- In every cycle of 10 vacancies, other than leave vacancies, the 1st, 4th, 7th and 10th vacancies shall be filled by direct recruitment and the remaining six vacancies shall be filled by appointment by transfer in the ratio of vacancies as mentioned below:

Among the Senior Assistants/Senior Stenographers and the personnel working in the Labour Welfare Centers, the appointment to the post of Assistant Labour Officer shall be made in the ratio of 9:1 respectively in the

following order of rotation:

(1) Senior Assistant/Senior Stenographer
(2) Senior Assistant/Senior Stenographer
(3) Senior Assistant/Senior Stenographer
(4) Labour Welfare Centre Staff
(5) Senior Assistant/Senior Stenographer
(6) Senior Assistant/Senior Stenographer
(7) Senior Assistant/Senior Stenographer
(8) Senior Assistant/Senior Stenographer
(9) Senior Assistant/Senior Stenographer
(10) Senior Assistant/Senior Stenographer

Provided that among the Senior Assistants/Senior Steno of the Directorate and the Senior Assistants/Senior Stenos of the Subordinate Offices, the appointment shall be in the ratio of 2:3 respectively in the following rotation:

1st vacancy : Subordinate Offices
2nd vacancy : Directorate
3rd Vacancy : Subordinate Offices
4th Vacancy : Directorate
5th Vacancy : Subordinate Offices

(Subs. By G.O.Ms.No.22, Labour Employment Training & Factories (Lab.IV) Dt. 9.5.1996 w.e.f. 26.11.1994)

Note (1) to Rule-3 requires four out of ten vacancies to be filled by direct recruitment and the remaining six on appointment by transfer. Among the ten vacancies, nine are earmarked for senior assistants/senior stenographers and the 10th for the labour welfare center staff. Among the vacancies earmarked for senior assistants/senior stenographers, appointment is required to be made in the ratio of 2:3 between senior assistants/senior stenographers of the directorate (Head Office) and senior assistants/senior stenographers in the subordinate offices. Thus, in a cycle of five vacancies while the first, third and fifth go to

subordinate offices, the second and fourth are reserved for the directorate or the Head Office.

As noted above, the office of heads of departments/directorate, in view of paragraph-14, fall outside the scope of the Presidential Order. Subordinate offices, on the other hand, form part of the local cadre (district/zone) and the post of Assistant Labour Officer in Category 1 of Rule-2 is a zonal cadre post under Paragraph 3(3) of the Presidential Order. As the method of appointment prescribed under Rule 3, includes appointment by transfer of senior assistants and senior stenographers working in the office of the heads of departments and the second and fourth vacancy, in the cycle of five vacancies, having been reserved in their favour, employees who do not form part of the zonal cadre, and to whom the provisions of the Presidential Order does not apply, were entitled to be appointed to the zonal cadre post of Assistant Labour Officer.

Article 371-D is a special provision which marks a departure from the general scheme of the Constitution. The area of departure cannot, therefore, extend beyond what is unmistakably and specifically delineated by the words employed therein or in the Presidential Order made thereunder. Article 371-D, in effect, enables the President to make an order enabling prescription of “residence” in a part of the State for employment or appointment to a public office in the State. Clause (10) of Article 371-D gives overriding effect, both to the provisions of Article 371-D and an order made by the President thereunder, over other provisions of the Constitution and any other law in force. Thus prescription of

"residence" in a part of the State of Andhra Pradesh is permissible, notwithstanding the prohibition under Article 16(2), if it is so provided under the Presidential Order. The provisions of Article 371-D, and the Presidential Order, are insulated from attack or challenge based on any other provisions of the Constitution or any other law for the time being in force. It is also not open to challenge on the ground of violation of Part III of the Constitution, (**Dr. B. Sudhakar Vs. Union of India**[7] **Dr. Fazal Ghafoor Vs. The Principal**, **Osmania Medical College, Hyderabad**[8]) , since the Presidential Order has been given overriding effect.

In exercise of the powers conferred by clauses (1) and (2) of Article 371-D of the Constitution the President made, with respect to the State of Andhra Pradesh, the "A.P. Public Employment (Organization of Local Cadre and Regulation of Direct Recruitment) Order, 1975", which was notified in G.S.R. 524(E) and came into force on 18.10.1975. Para 2(e) thereof defines "local cadre" to mean any local cadre of posts under the state government organized pursuant to paragraph 3, or constituted otherwise for any part of the State. Para 3 relates to organization of local cadres and, under sub-para (1) thereof, the State Government was required, within a period of twenty-seven months from the commencement of the Order, to organize classes of posts in the civil services and classes of civil posts under the State into different local cadres for different parts of the State to the extent, and in the manner, provided thereafter in the

Presidential Order. With a view to enable organization thereafter, of different local cadres for different parts of the State, a proviso was inserted to Para 3(1), as notified in G.O.Ms. No. 34 dated 24.01.1981, which enables the President, notwithstanding the expiration of the period of twenty seven months specified in Para 3(1), to make an order, whenever he considers it expedient to do so, requiring the State Government to organize any classes of posts in the civil services of and classes of civil posts under the State into different local cadres for different parts of the State. Under Para 3(2) posts belonging to the category of junior assistants, and to each of the other categories equivalent to and lower than junior assistants in each department in each district, shall be organized into a separate cadre. Para 3(3) provides that posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone shall be organized into a separate cadre. Under para 3(4) posts belonging to each specified gazetted category in each department in each zone are required to be organized into a separate cadre.

The object of organizing different local cadres for different parts of the State is clear from Paragraphs 4 and 5 of the Presidential Order. Under Para 4(1), persons holding posts, required to be organized into local cadres, were to be allotted to such cadres by the state government in accordance with the principle and procedure specified in the Presidential Order. Under Para 5(1) each part of the State, for which a local cadre has been organized in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, seniority, promotion,

transfer etc. On a local cadre being organized under Para 3(1) each part of the State, for which such a local cadre was organized, is required to be treated as a separate unit and it is only from amongst persons allotted thereto are appointments to be made, promotions effected and their seniority determined. As stipulated in Para 5(1), a local cadre is a distinct and separate unit and, for matters prescribed therein, persons who do not belong to the said local cadre or those who belong to other local cadres cannot form part thereof. A local cadre, once organized, cannot be meddled with. The consequence, of organizing different local cadres for different parts of the State, is that each of these local cadres, being a distinct and separate unit, in effect, provides for reservation on the basis of residence in a part of the State of Andhra Pradesh. But for the protection conferred on it by the Presidential Order, any such provision would have been void under Article 13(2) as it would contravene Article 16(2) of the Constitution of India.

Para 14 is the savings clause and provides that nothing in the Presidential Order would apply, among others, to any post in offices of the heads of departments. As posts in the offices of the heads of departments are not covered by the Presidential Order they are not entitled for its protection. Local area reservation, or reservation on the basis of residence in a part of the State, cannot be provided to such posts as it would then contravene Article 16(2) of the Constitution which prohibits discrimination in respect of any employment or office under the State on the ground of residence.

It was not disputed before the Tribunal, nor has it been disputed before us, that the posts of Assistant Labour Officers, under the A.P. Labour Subordinate Service Rules, is a post in respect of which a zonal cadre has been organized under Para 3(3) of the Presidential Order. It is also not in dispute that senior assistants and senior stenographers, in the A.P. Ministerial Services, working in the head office of the labour department, factories department and boilers department do not fall under the ambit of the Presidential Order, in view of Para 14 thereof, and have not been organized into local cadres.

Since the post of Assistant Labour Officer is a zonal cadre post, and forms part of the zonal cadre, the question which arises for consideration is whether persons, who do not belong to such a local zonal cadre, can be permitted to be considered for appointment by transfer to such zonal cadre posts. A similar question arose for consideration in **V. Jagannadha Rao**[1] wherein the validity of the order of the Tribunal striking down certain provisions of the A.P. Labour Subordinate Service Rules fell for consideration. The Supreme Court observed:

"……..**It is to be noted that para 5(1) of the Presidential Order is in terms of para 3(3) thereof. Para 3(3) postulates that each department in each zone shall be organised into a separate cadre. Para 5(1) speaks of a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion and transfer and such other matters as may be specified by the State Government in respect of the category of posts and each part of the State for which local cadre has been organised in respect of any category of posts is required to have a separate unit for the aforesaid purposes. Para 5(2) is in the nature of an enabling provision which authorizes the State Government to make provisions for transfer in certain specified circumstances. The present dispute relates to para 5(2)(*c*). It speaks of a transfer. Attempt of the appellants is to give enlarged meaning to the expression to include promotional**

aspects. It has been contended in that context that though para 5(1) treats promotion and transfer separately, yet that distinction would not be applicable to cases covered by para 5(2). The contention is clearly untenable.

Transfer in relation to service reduced to simple terms means a change of place of employment within an organization, as stated in *New Oxford English Dictionary*, 1993 Edn., Vol. 2, p. 3367. It is an incidence of public service and generally does not require the consent of the employee. In most service rules, there are express provisions relating to transfer.

……..Though definitions may differ and in many cases transfer is conceived in wider terms as a movement to any other place or branch of the organization, transfer essentially is to a similar post in the same cadre as observed by this Court in *B. Varadha Rao* v. *State of Karnataka (AIR 1987 SC 287)*. It is now well settled that a government servant is liable to be transferred to a similar post in the same cadre which is a normal feature and incidence of government service and no government servant can claim to remain in a particular place or in a particular post unless, of course, his appointment itself is to a specified non-transferable post. **No transfer is made to a post higher than what a government servant is holding. In other words, it is generally a lateral and not vertical movement within the employers organization**.

…….**We find that para 5(2) of the Presidential Order speaks of transfer and not of promotion. It would be hazardous to accept the contention of the appellants that promotion is included in the expression transfer and no assistance can be availed from the distinction made in para 5(1) of the Order. No provision or word in a statute has to be read in isolation. In fact, the statute has to be read as a whole. A statute is an edict of the legislature. It cannot be said that without any purpose the distinction was made in para 5(1) between transfer and promotion and such distinction was not intended to be operative in para 5(2)……**

…….In *Sadanandam case: AIR 1989 SC 2060* while considering the legality of amended provisions of the Rules framed by the State Government and in sustaining the same, this Court was of the opinion that as the aforesaid Rules had been framed under Section (3) of the Andhra Pradesh Ordinance 5 of 1983 read with para 5(2)(*a*) of the Presidential Order, the conclusion of the Tribunal in striking down the rule is erroneous. The Court was of the opinion that mode of recruitment and category from which the recruitment to a service should be made are policy matters exclusively within the purview and domain of the executive and it would not be appropriate for judicial bodies to sit in judgment over the wisdom of the executive in choosing the mode of recruitment or the categories from which the recruitment should be made. In our considered opinion, both the

aforesaid reasons do not constitute a true interpretation of the provisions of the Presidential Order. **At the outset, it may be noticed that Article 371-D(10) of the Constitution unequivocally indicates that the said article and any order made by the President thereunder shall have effect notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force. Necessarily, therefore, if it is construed and held that the Presidential Order prohibits consideration of the employees from the feeder category from other units then such a rule made by the Governor under the proviso to Article 309 of the Constitution will have to be struck down**. Then again in exercise of powers under para 5(2) of the Presidential Order if the State Government makes any provision, which is outside the purview of the authority of the Government under para 5(2) of the Order itself, then the said provision also has to be struck down. **Having construed the Rules framed by the Governor under proviso to Article 309 of the Constitution from the aforesaid standpoint, the conclusion is irresistible that the said Rule to the extent indicated by the Tribunal is constitutionally invalid and its conclusion is unassailable. In the case in hand, the impugned provisions do not appear to have been framed in exercise of powers under para 5(2) of the Presidential Order and as such the same being a Rule made under proviso to Article 309 of the Constitution, the Presidential Order would prevail, as provided under Article 371-D(10) of the Constitution.** Even if it is construed to be an order made under para 5(2) of the Presidential Order, then also the same would be invalid being beyond the permissible limits provided under the said paragraph. **In this view of the matter, the Tribunal rightly held the provision to the extent it provides for consideration of employees of the Factories and Boilers Units to be invalid, for the purpose of promotion to the higher post in the Labour Unit and as such we see no justification for our interference with the said conclusion of the Tribunal and the earlier judgment of this Court in *Sadanandam case: AIR 1989 SC 2060* must be held to have not been correctly decided. As a consequence, so would be the case with *Satyanarayana Rao case: AIR 2000 SC 1799***.....(emphasis supplied)

It is true that the factual matrix in the present case is not identical to that of **V. Jagannadha Rao[1]**. While, in the present case, the method of appointment under the Rules is appointment by transfer from posts in the head office to the post of the Assistant Labour Officer in the subordinate office of the same department, in **V. Jagannadha Rao[1]** appointment by transfer was from posts in one department to posts in another. This distinction

is, however, insignificant. The Supreme Court in **V. Jagannadha Rao**[1], while examining the validity of certain provisions of the A.P. Labour Subordinate Service Rules, interpreted the provisions of the Presidential Order and the construction placed by the Supreme Court, on the provisions of the Presidential Order, is binding on the High Court and must be followed.

Clause 21, of the instructions in G.O.P. No.729 dated 1.11.1975, relates to recruitment to posts in offices of heads of departments and specifically provides that the scheme of reservation in favour of local candidates, as prescribed in the Presidential Order, would not apply to such posts. It needs no reiteration that it is only to the limited extent that Article 371-D of the Constitution of India requires, and the Presidential Order so provides, can different local cadres be organized for different parts of the State. But for the provision of Article 371-D, and the Presidential Order, any such local area reservation, or reservation on the basis of residence in a part of the State, would have fallen foul of Article 16(2) and would be void in view of Article 13(2) of the Constitution. In so far posts in the office of the heads of departments are concerned, since Para 14 itself provides that the Presidential Order has no application to such posts, local area reservation/reservation on the basis of residence in a part of the State, cannot be provided to posts in head offices as it would then be in violation of Article 16(2) of the Constitution of India. It is only when the source of power to so provide is referable to a specific provision in the Presidential Order itself would exercise of such power be entitled for protection under clause (10) of Article 371-D

of the Constitution of India. Since the source of power of the State government, in making rules providing for appointment to posts in a local zonal cadre by transfer from posts in the offices of heads of departments, is not referable to any of the provisions of the Presidential Order, such rules are not protected under Article 371-D(10) of the Constitution of India and, consequently, are liable to be struck down as ultravires Article 16(2) of the Constitution. Clause 21, of the instructions in G.O.(P) No. 729 dated 01.11.1975, is but a reiteration of this principle and reliance placed thereon, to contend that employees holding posts in the offices of heads of departments are entitled to be appointed by transfer to local cadre posts, (district/zone), is misplaced.

The mere fact that posts, in offices of the heads of departments, do not come within the purview of the Presidential Order would not entitle employees holding such posts to claim appointment by transfer to posts in a local cadre for, under Para 5(1) of the Presidential Order, each part of the State for which a local cadre has been organized, in respect of any category of posts, shall be a separate unit for purposes of recruitment, appointment, discharge, seniority, promotion, transfer etc., Appointment by transfer to a zonal cadre post, in view of para 5(1), can only be made from persons within the said zonal cadre and who form part thereof. Since employees appointed in posts in the offices of the heads of departments do not form part of the local zonal cadre they are not entitled to be appointed by transfer to posts in the said local zonal cadre as any such appointment would be in violation of Para 5(1) of the Presidential Order. Since

posts in the office of the Heads of Department are outside the purview of the Presidential order, local area reservation/reservation on the basis of residence in a part of the State, cannot be provided for such posts and consequently employees from all over the State, including those in subordinate offices who form part of a zonal cadre, cannot be excluded from consideration, for appointment to posts in the offices of heads of departments, merely on the basis of residence. Reliance placed on Notes (1) and (2) of Rule 3 of the Ministerial Service Rules 1998 is, therefore, misplaced.

The mere fact that persons from subordinate offices are entitled to be appointed on transfer to posts in offices of heads of departments would not confer a similar right on employees, appointed to posts in offices of the heads of departments, to be considered for appointment by transfer to posts in subordinate offices, which are organized as zonal cadres under Para 3(3) of the Presidential Order. The distinction is obvious. While posts, which are not governed by the provisions of the Presidential Order, cannot be extended the benefit of local area reservation, or reservation on the basis of residence in a part of the State, nor can employees, who form part of a local zonal cadre, be excluded from consideration, for appointment to such posts, merely on the basis of residence in a part of the State, persons holding posts, which fall outside the scope of the Presidential Order, cannot claim parity and seek appointment to posts in a localized zonal cadre, for a local cadre, under Para 5(1) of the Presidential Order, is a separate and distinct unit for the purpose of promotion,

appointment, seniority etc,. Persons who do not belong to the local zonal cadre are not entitled to claim parity under Article 14 and 16 of the Constitution of India, for being considered for appointment by transfer to posts in such local cadres, since clause (10) of Article 371-D gives over-riding effect to the Presidential Order over other provisions of the Constitution including Part III thereof. The plea of discrimination must, therefore, fail.

Under Clause 2(a) of Article 371-D an order made by the President, under clause (1) of Article 371-D, may require the State Government to organize any class or classes of posts in any civil service of the State, or to such class or classes of civil posts under the State, into different local cadres for different parts of the State and allot, in accordance with such principle and procedure as may be specified in the order, the persons holding such posts to the local cadres so organized. Under Clause 2(b)(iii) the order made by the President, under clause (1) of Article 371-D, may specify any part or parts of the State which shall be regarded as a local area for the purpose of admission to any University within the State or any other educational institution which is subject to the control of the State Government. While organization of local cadres falls under clause 2(a) and 2(b)(i) of Article 371-D, local area reservation for admissions to universities, or other educational institutions subject to the control of the State Government, falls under clause 2(b)(iii) of Article 371-D. Since the areas of operation differ, separate orders were made by the President i.e., (1). The A.P. Educational Institutions (Regulation of

Admission) Order, 1974; and (2). The A.P. Public Employment (organization of local cadres and regulation of direct recruitment) Order, 1975. As both these orders operate in different areas, the provisions of one order cannot be read into the other. Reading the provisions of the educational order into the provisions of the public employment order would, in effect, amount to adding or substituting words in the public employment order. No right, must less a fundamental right, can be claimed by any person to be treated as belonging to a local cadre under the Presidential Order nor can Para 8, which prescribes the extent of reservation to posts to be filled in by direct recruitment, be read into Para 5(1), either for promotion or appointment by transfer.

It is a cardinal principle of interpretation of statutes that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning. (**Gurudevdatta VKSSS Maryadit Vs. State of Maharashtra**[9]). The legislature may be safely presumed to have intended what the words plainly say. (**Bhaiji Vs. Sub-Divisional Officer, Thandla**[10]). What is to be borne in mind is what has been said in the statute and what has not been said. A construction which requires, for its support, addition or substitution of words or which results in rejection of words, has to be avoided. (**Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests**[11], **Shyam Kishori Devi Vs. Patna Municipal Corpn**[12], **A. R. Antulay Vs. Ramdas Sriniwas Nayak**[13],

Dental Council of India Vs. Hari Prakash[14], **J. P. Bansal Vs. State of Rajasthan**[15] and **State of Jharkhand Vs. Govind Singh**[16]). The primary rule of construction is that the intention of the Legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said. (**Unique Butyle Tube Industries Pvt. Ltd. Vs. Uttar Pradesh Financial Corporation**[17]). It is not for Courts to supply words to Para 5(1) of the Presidential Order. Courts should not, ordinarily, add words to a statute or read words into it which are not there, especially when a literal reading thereof produces an intelligible result. (**Delhi Financial Corpn Vs. Rajiv Anand**[18]). There is a line, though thin, which separates adjudication from legislation. That line should not be crossed or erased. Courts expound the law, they do not legislate. (**State of Kerala Vs. Mathai Verghese**[19], **Union of India Vs. Deoki Nandan Aggarwal**[20]). A Judge is not entitled to add something more than what is there in the Statute by way of a supposed intention of the legislature. (**Union of India Vs. Elphinstone Spinning and Weaving Co. Ltd**[21]). The legislative *casus omissus* cannot be supplied by judicial interpretative process. ((**Maruti Wire Industries Pvt. Ltd. Vs. S.T.O., I.S.T. Circle, Mattancherry**[22], **Govind Singh**[16]). In interpreting a statute the court cannot add or amend by construction to make up deficiencies which are left there. (**State**

of Gujarat Vs. Dilipbhai Nathjibhai Patel[23]). Courts are not entitled to read words into an Act unless clear reasons for it is to be found within the four corners of the Act itself. (**The Union of India Vs. Braj Nandan Singh**[24]).

Since a local cadre (district/zone) constitutes a separate unit for the purpose of appointment, promotion, seniority etc., it is only from within the said local cadre can employees be considered for promotion/appointment by transfer to higher posts in the local cadre. On the other hand, employees from outside the local cadre are not entitled to be considered and any rule which so provides is liable to be struck down as ultravires Para 5(1) of the Presidential Order. It is necessary, in this context, to note that the A.P. Labour Subordinate Service Rules were made in exercise of the powers conferred by the Proviso to Article 309 of the Constitution. The opening words of Article 309, *"**subject to the provisions of this Constitution**"*, limit the amplitude of that power. (**B.S. Yadav Vs. State of Haryana**[25]). Exercise of power by the State Legislature to make laws under Article 309, or of the Governor to make rules under its proviso, are open to challenge on the ground of violation of the provisions of the Constitution. (**Chairman, Railway Board Vs. C.R. Rangadhamaiah**[26]). The legislative authority and the Rule making power to regulate recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of a State under Article 309, is also qualified by the declaration made in Article 13(2), that any

law, which takes away or abridges the rights conferred by Part III shall be void. (**Behram Khurshid Pesikaka Vs. State of Bombay**[27]). Since the rules, made in exercise of the powers conferred by the Proviso to Article 309 of the Constitution of India, are "***subject to the provisions of the Constitution***" and under Clause (10) of Article 371-D, the provisions of the Presidential Order shall have effect notwithstanding anything contained in any other provision of the Constitution, a rule made under the proviso to Article 309 contrary to the Presidential Order is liable to be struck down.

We affirm the order of the Tribunal declaring the method of appointment, to the category of Assistant Labour Officer, under Rule 3 of the A.P. Labour Subordinate Service Rules, notified in G.O.Ms. No. 14 dated 26.11.1994 as amended in G.O.Ms. No. 22 dated 09.05.1996, to the extent they provide a channel for senior assistants and senior stenographers in the A.P. Ministerial Services, working in the head offices of the labour, factories and boilers departments and subordinate offices of the factories and boilers departments, for appointment by transfer to the post of Assistant Labour Officer (a zonal cadre post), as void being violative of the A.P. Public Employment (Organisation of local cadres and regulation of direct recruitment) Order, 1975.

Now the question whether the Tribunal was justified in holding that the aforesaid rules are violative of the Presidential Order only from the date of the judgment of the Supreme Court in **V. Jagannadharao**[1] and that any action taken in compliance with

the rules prior to 07.11.2001 should not be disturbed so as to result in reversion of any employee from the post to which he has been promoted under the rules. The aforesaid direction of the Tribunal, in effect, amounts to application of the doctrine of prospective overruling.

In **Golak Nath Vs. State of Punjab**[28] the Supreme Court observed:-

"……..As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: **(*1*) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (*2*) it can be applied only by the highest Court of the country i.e. the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India**; (*3*) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it……."(emphasis supplied)

That the doctrine of prospective overruling can only be invoked by the Supreme Court, and not by other Courts including the High Court, was reiterated in **State of H.P. Vs. Nurpur (P) Bus operators' Union**[29]. Deviation, though slight, from this principle can be found in the observations of the Supreme Court in **Raymond Ltd Vs. M.P. Electricity Board**[30] wherein it was held:-

"……So far as the challenge made to the judgment of the Full Bench of the High Court, in confining its operation and applicability only for future period is concerned, **Shri G.L. Sanghi, learned counsel, followed by the others have strongly contended that the High Court as such cannot apply the principle of prospective overruling**. Reliance in this regard has been placed upon the decision reported in *State of H.P.* v. *Nurpur Private Bus Operators Union (1999)9 SCC 559)* to which one of us (B.N. Kirpal, J.) was

a party. Passing reference has been made to the decision in *Golak Nath* v. *State of Punjab (AIR 1967 SC 1643)* and the observation contained therein that the doctrine of prospective overruling can be invoked only in matters arising under the Constitution and that it can be applied by the Supreme Court of India. **The decision in *Golak Nath* *(AIR 1967 SC 1643)* as such was subsequently overruled by the decision reported in *Kesavananda Bharati* v. *State of Kerala (AIR 1973 SC 1461)* though not specifically on this point**. Reliance has also been placed upon the decision reported in *K.S. Venkataraman & Co. (P) Ltd.* v. *State of MadraS (AIR 1966 SC 1089)* even to contend that if the High Court had no such power, this Court while hearing an appeal from such judgment of the High Court, equally cannot exercise such powers. This submission of the learned counsel overlooks the vital fact in that case that not only was the High Court found to exercise under Section 66 of the Income Tax Act, 1922 a special advisory jurisdiction the scope of which stood limited by the section conferring such jurisdiction but even the appeal to the Supreme Court having been made only under Section 66-A(2) of the said Act was noticed to hold that the jurisdiction of this Court also does not get enlarged and that the Supreme Court can also only do what the High Court could do. **Apart from the fact that the writ jurisdiction conferred upon High Courts under Article 226 of the Constitution does not carry any restriction in the quality and content of such powers, this Court could always have recourse to the said doctrine or principle or even dehors the necessity to fall back upon the said principle pass such orders under powers which are inherent in its being the highest court in the country whose dictates, declaration and mandate run throughout the country and bind all courts and every authority or persons therein and having regard to Articles 141 and 142 of the Constitution of India**. The appellate powers under Article 136 of the Constitution itself would also be sufficient to pass any such orders. This Court has been from time to time exercising such powers whenever found to be necessary in balancing the rights of parties and in the interests of justice (vide: *Union of India* v. *Mohd. Ramzan Khan (1991)1 SCC 588)*, *Managing Director, ECIL, Hyderabad* v. *B. Karunakar (1993)4 SCC 727)* and *India Cement Ltd.* v. *State of T.N (1990)1 SCC 12*). The decision reported in *Nurpur Private Bus Operators Union (1999)9 SCC 559)* at any rate is no authority for any contra position to deny such powers to this Court…. (emphasis supplied)

The parameters laid down in **Golaknath**[28] was noted, as not being adhered to in practice, in **Somaiya Organics Vs. State of U.P**[31] wherein the Supreme Court observed:-

"……..**Although the doctrine of prospective overruling was drawn from American jurisprudence, it has/had, of necessity, to develop indigenous characteristics. The parameters of the power as far as this country is**

concerned were sought to be laid down in *Golak Nath* (AIR 1967 SC 1643) itself when it was said:

"……As this Court for the first time has been called upon to apply the doctrine evolved in a different country under different circumstances, we would like to move warily in the beginning. We would lay down the following propositions: (*1*) The doctrine of prospective overruling can be invoked only in matters arising under our Constitution; (*2*) it can be applied only by the highest court of the country, i.e., the Supreme Court as it has the constitutional jurisdiction to declare law binding on all the courts in India; (*3*) the scope of the retroactive operation of the law declared by the Supreme Court superseding its earlier decisions is left to its discretion to be moulded in accordance with the justice of the cause or matter before it……"

The parameters have not been adhered to in practice……." (emphasis supplied)

Again, in **Kailash Chand Sharma Vs. State of Rajastan**[32], the Supreme Court held:-

"……Law reports are replete with cases where past actions and transactions including appointments and promotions, though made contrary to the law authoritatively laid down by the Court were allowed to remain either on the principle of prospective overruling or in exercise of the inherent power of the Court under Article 142. **The learned Senior Counsel Mr P.P. Rao reminds us that this power is only available to the Supreme Court by virtue of Article 142 and it is not open to the High Court to neutralize the effect of unconstitutional law by having resort to the principle of prospective overruling or analogous principle. The argument of the learned counsel, though not without force, need not detain us for the simple reason that as this Court is now seized of the matter, can grant or mould the relief, without in any way being fettered by the limitations which the High Court may have had**. We are of the view that there is sufficient justification for the prospective application of the law declared in the instant cases for more than one reason and if so, the declaration of the High Court to that extent need not be disturbed……..(emphasis supplied)

It is, however, unnecessary for us to examine this question, whether the power of prospective overruling is concomitant to the power of judicial review under Article 226 of the Constitution of India, which in **L. Chandra Kumar Vs. Union of India**[33] was held to form part of the basic feature/structure of the Constitution, since the Supreme Court, in **V. Jagannadha Rao**[1], did not apply

the doctrine of prospective overruling to its judgment. In **Sarwan Kumar**[4], the Supreme Court observed:-

".....Invocation of the doctrine of prospective overruling is left to the discretion of the Court to mould with the justice of the cause or the matter before the Court. **This Court while deciding *Gian Devi Anand (1985)2 SCC683)* did not hold that the law declared by it would be prospective in operation. It was not for the High Court to say that the law laid down by this Court in *Gian Devi Anand (1985)2 SCC683)* would be prospective in operation. If this is to be accepted then conflicting rules can supposedly be laid down by different High Courts regarding the applicability of the law laid down by this Court in *Gian Devi Anand (1985)2 SCC683)* or any other case. Such a situation cannot be permitted to arise. In the absence of any direction by this Court that the rule laid down by this Court would be prospective in operation, the finding recorded by the High Court that the rule laid down in *Gian Devi Anand (1985)2 SCC683)* by this Court would be applicable to the cases arising from the date of the judgment of this Court cannot be accepted being erroneous**....." (emphasis supplied)

This was reiterated by the Supreme Court in **M.A. Murthy Vs. State of Karnataka**[34]. To quote:-

".....**Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective of its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception**. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *L.C. Golak Nath* v. *State of Punjab* (AIR 1967 SC 1643). In *Managing Director, ECIL* v. *B. Karunaka6 (1993)4 SCC 727)* the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding the law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See *Ashok Kumar Gupta* v. *State of U.P (1997)5 SCC 201)* and *Baburam* v. *C.C. Jacob (1999)3 SCC 362*) **It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by**

application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in *Ashok Kumar Sharma case No.(1997)4 SCC18)*. All the more so when the subsequent judgment is by way of review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside….." (emphasis supplied)

The decision of the Supreme Court, enunciating a principle of law, is applicable to all cases irrespective of the stage of its pendency. The law laid down by the Supreme Court must be held to be the law from the inception, unless the Supreme Court itself indicates that its decision will operate prospectively. It is not open for Courts/Tribunals to apply the law laid down by the Supreme Court only from the date on which the judgment came to be passed. In the absence of any direction by the Supreme Court, in **V. Jagannadha Rao**[1], that the law laid down therein is prospective in operation, it was not open to the Tribunal to hold that the law would apply prospectively only from 07.11.2001 i.e., from the date of the judgment in **V. Jagannadha Rao**[1]. The order of the Tribunal, to the limited extent that the judgment in **V. Jaganandha Rao**[1] was held applicable only from 7.11.2001, must, accordingly, be set aside. As a result, W.P.Nos.6123 and 6068 of 2004 are allowed and W.P.No.16890 of 2006 is dismissed. However, in the circumstances, without costs.

_____

B. PRAKASH RAO, J

Date: -03-2007

_____

RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.

B/O

MRKR/ASP

[1] AIR 2002 SC 77

[2] AIR 1989 SC 2060

[3] AIR 2000 SC 1729

[4] (2003)4 SCC 147)

[5] (2003)7 SCC 517

[6] Judgment in W.P.No.25633 of 1999 dated 25.3.2003

[7] AIR 1995 AP 86 (FB)

[8] 1988(2) ALT 227

[9] 2001(4) SCC 534

[10] 2003(1) SCC 692

[11] AIR 1990 SC 1747

[12] AIR 1966 SC 1678

[13] (1984 (2) SCC 500

[14] (2001)8 SCC 61

[15] (2003)5 SCC 134

[16] (2005)10 SCC 437

[17] (2003)2 SCC 455

[18] (2004)11 SCC 625

[19] (1986 (4) SCC 746

[20] AIR 1992 SC 96

[21] (2001)4SCC 139

[22] (2001)3 SCC 735

[23] 1998)3 SCC 234

[24] 2005(8) SCC 325

[25] AIR 1981 SC 561

[26] 1997(6) SCC 623

[27] AIR 1955 SC 123

[28] AIR 1967 SC 1643

[29] (1999) 9 SCC 559

[30] (2001)1 SCC 534

[31] 2001(5) SCC 519

[32] (2002) 6 SCC 562

[33] AIR 1997 SC 1125

[34] (2003)7 SCC 517